

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CYBERFONE SYSTEMS LLC,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 11-830-SLR
)	
AVAYA, INC., <i>et al.</i> ,)	DEMAND FOR JURY TRIAL
)	
Defendants.)	
)	

**ALCATEL-LUCENT USA INC.'S ANSWER TO
CYBERFONE SYSTEMS, LLC'S FIRST AMENDED COMPLAINT**

Defendant Alcatel-Lucent USA Inc. ("Defendant"), by and through their undersigned counsel, hereby answer CyberFone Systems, LLC's ("Plaintiff") First Amended Complaint ("the Complaint"). Defendant demands a jury trial on all issues so triable.

1. Upon information and belief, Defendant admits that CyberFone is a Virginia limited liability company with its principal place of business at 2331 Mill Road, Suite 100, Alexandria, Virginia 22314.

2. The allegations of Paragraph 2 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 2 of the Complaint and therefore denies them.

3. The allegations of Paragraph 3 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 3 of the Complaint and therefore denies them.

4. The allegations of Paragraph 4 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 4 of the Complaint and therefore denies them.

5. The allegations of Paragraph 5 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 5 of the Complaint and therefore denies them.

6. Defendant admits that Alcatel-Lucent USA Inc. (“Alcatel-Lucent”) is a Delaware corporation with its principal place of business at 600-700 Mountain Avenue, Murray Hill, New Jersey 07974. Defendant admits that Alcatel-Lucent has appointed Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, as its registered agent for service of process.

7. The allegations of Paragraph 7 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 7 of the Complaint and therefore denies them.

8. The allegations of Paragraph 8 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 8 of the Complaint and therefore denies them.

9. The allegations of Paragraph 9 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 9 of the Complaint and therefore denies them.

10. The allegations of Paragraph 10 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 10 of the Complaint and therefore denies them.

11. The allegations of Paragraph 11 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 11 of the Complaint and therefore denies them.

12. The allegations of Paragraph 12 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 12 of the Complaint and therefore denies them.

13. The allegations of Paragraph 13 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 13 of the Complaint and therefore denies them.

JURISDICTION AND VENUE

14. Defendant admits that Plaintiff purports to assert a civil action for patent infringement under the patent laws of the United States, 35 U.S.C. § 1 et seq. Defendant admits that this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

15. Paragraph 15 of the Complaint is a legal conclusion and does not require a response. To the extent paragraph 15 contains any factual allegations, Defendant denies those allegations.

COUNT I

(Infringement of U.S. Patent No. 7,334,024)

16. Defendant denies that U. S. Patent No. 7,334,024 (“the ’024 patent”) is entitled “System for Transmission of Voice and Data Over the Same Communication Lines,” and denies that the ’024 patent was issued on February 19, 2001. Defendant lacks knowledge or information sufficient to form a belief about the truth of the other allegations of ¶ 16 of the Complaint, and therefore denies them.

17. The allegations of Paragraph 17 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 17 of the Complaint and therefore denies them.

18. The allegations of Paragraph 18 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 18 of the Complaint and therefore denies them.

19. The allegations of Paragraph 19 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 19 of the Complaint and therefore denies them.

20. The allegations of Paragraph 20 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 20 of the Complaint and therefore denies them.

21. Denied.

22. The allegations of Paragraph 22 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 22 of the Complaint and therefore denies them.

23. The allegations of Paragraph 23 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 23 of the Complaint and therefore denies them.

24. The allegations of Paragraph 24 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 24 of the Complaint and therefore denies them.

25. The allegations of Paragraph 25 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 25 of the Complaint and therefore denies them.

26. The allegations of Paragraph 26 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 26 of the Complaint and therefore denies them.

27. The allegations of Paragraph 27 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 27 of the Complaint and therefore denies them.

28. The allegations of Paragraph 28 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 28 of the Complaint and therefore denies them.

29. Some of the allegations of Paragraph 29 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 29 of the Complaint which are directed to others and therefore denies them. The remaining allegations of Paragraph 29 are also denied.

30. Some of the allegations of Paragraph 30 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 30 of the Complaint which are directed to others and therefore denies them. The remaining allegations of Paragraph 30 are also denied.

COUNT II

(Infringement of U.S. Patent No. 6,044,382)

31. Defendant admits that U. S. Patent No. 6,044,382 (“the ’382 patent”) states that it is entitled “Data Transaction Assembly Server,” and that the ’382 patent states that it was issued

on March 28, 2000. Defendant lacks knowledge or information sufficient to form a belief about the truth of the other allegations of ¶ 31 of the Complaint, and therefore denies them.

32. The allegations of Paragraph 32 are not directed to Defendant. Defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 32 of the Complaint and therefore denies them.

33. The allegations of Paragraph 33 are not directed to Defendant. Defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 33 of the Complaint and therefore denies them.

34. The allegations of Paragraph 34 are not directed to Defendant. Defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 34 of the Complaint and therefore denies them.

35. The allegations of Paragraph 35 are not directed to Defendant. Defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 35 of the Complaint and therefore denies them.

36. Denied.

37. The allegations of Paragraph 37 are not directed to Defendant. Defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 37 of the Complaint and therefore denies them.

38. The allegations of Paragraph 38 are not directed to Defendant. Defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 38 of the Complaint and therefore denies them.

39. The allegations of Paragraph 39 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 39 of the Complaint and therefore denies them.

40. The allegations of Paragraph 40 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 40 of the Complaint and therefore denies them.

41. The allegations of Paragraph 41 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 42 of the Complaint and therefore denies them.

42. The allegations of Paragraph 42 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 42 of the Complaint and therefore denies them.

43. The allegations of Paragraph 43 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 43 of the Complaint and therefore denies them.

44. Some of the allegations of Paragraph 44 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 44 of the Complaint which are directed to others and therefore denies them. The remaining allegations of Paragraph 45 are also denied.

45. Some of the allegations of Paragraph 45 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 45 of the Complaint which are directed to others and therefore denies them. The remaining allegations of Paragraph 45 are also denied.

COUNT III

(Infringement of U.S. Patent No. 5,987,103)

46. Defendant admits that U.S. Patent No. 5,987,103 (the '103 patent) states that it is entitled "Telephone/Transaction Entry Device and System for Entering Transaction Data Into Databases," and that the '103 patent states that it was issued on November 16, 1999. Defendant lacks knowledge or information sufficient to form a belief about the truth of the other allegations of ¶ 46 of the Complaint, and therefore denies them.

47. The allegations of Paragraph 47 are not directed to Defendant. Defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 47 of the Complaint and therefore denies them.

48. The allegations of Paragraph 48 are not directed to Defendant. Defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 48 of the Complaint and therefore denies them.

49. The allegations of Paragraph 49 are not directed to Defendant. Defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 49 of the Complaint and therefore denies them.

50. The allegations of Paragraph 50 are not directed to Defendant. Defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 50 of the Complaint and therefore denies them.

51. Denied.

52. The allegations of Paragraph 52 are not directed to Defendant. Defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 52 of the Complaint and therefore denies them.

53. The allegations of Paragraph 53 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 53 of the Complaint and therefore denies them.

54. The allegations of Paragraph 54 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 54 of the Complaint and therefore denies them.

55. The allegations of Paragraph 55 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 55 of the Complaint and therefore denies them.

56. The allegations of Paragraph 56 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 56 of the Complaint and therefore denies them.

57. The allegations of Paragraph 57 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 57 of the Complaint and therefore denies them.

58. The allegations of Paragraph 58 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 58 of the Complaint and therefore denies them.

59. Some of the allegations of Paragraph 59 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 59 of the Complaint which are directed to others and therefore denies them. The remaining allegations of Paragraph 59 are also denied.

60. Some of the allegations of Paragraph 60 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 60 of the Complaint which are directed to others and therefore denies them. The remaining allegations of Paragraph 60 are also denied.

COUNT IV

(Infringement of U.S. Patent No. 5,805,676)

61. Defendant admits that U.S. Patent No. 5,805,676 (the '676 patent) states that it is entitled "Telephone/Transaction Entry Device and System for Entering Transaction Data Into Databases," and that the '676 patent states that it was issued on September 8, 1998. Defendant lacks knowledge or information sufficient to form a belief about the truth of the other allegations of ¶ 61 of the Complaint, and therefore denies them.

62. The allegations of Paragraph 62 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 62 of the Complaint and therefore denies them.

63. The allegations of Paragraph 63 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 63 of the Complaint and therefore denies them.

64. The allegations of Paragraph 64 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 64 of the Complaint and therefore denies them.

65. The allegations of Paragraph 65 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 65 of the Complaint and therefore denies them.

66. Denied.

67. The allegations of Paragraph 67 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 67 of the Complaint and therefore denies them.

68. The allegations of Paragraph 68 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 68 of the Complaint and therefore denies them.

69. The allegations of Paragraph 69 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 69 of the Complaint and therefore denies them.

70. The allegations of Paragraph 70 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 70 of the Complaint and therefore denies them.

71. The allegations of Paragraph 71 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 71 of the Complaint and therefore denies them.

72. The allegations of Paragraph 72 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 72 of the Complaint and therefore denies them.

73. The allegations of Paragraph 73 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 73 of the Complaint and therefore denies them.

74. Some of the allegations of Paragraph 74 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph

74 of the Complaint which are directed to others and therefore denies them. The remaining allegations of Paragraph 74 are also denied.

75. Some of the allegations of Paragraph 75 are not directed to Defendant. Defendant is without knowledge or information sufficient to for a belief as to the allegations of Paragraph 75 of the Complaint which are directed to others and therefore denies them. The remaining allegations of Paragraph 75 are also denied.

Defendant denies the remaining allegations, if any, in Plaintiff's "Prayer for Relief," to the extent a response is required by law.

AFFIRMATIVE AND OTHER DEFENSES

Further answering the Complaint, Defendant asserts the following defenses, undertaking the burden of proof on such defenses only to the extent required by law. Defendant reserves its right to amend its Answer with additional defenses as more information is obtained.

FIRST DEFENSE

With respect to each purported claim for relief asserted against Defendant in the Complaint, Plaintiff fails to state a claim against Defendant upon which relief may be granted.

SECOND DEFENSE

Defendant has not infringed, contributed to the infringement of, or induced the infringement of any valid claim of U.S. Patent No. 7,334,024, U.S. Patent No. 6,044,382, U.S. Patent No. 5,987,103, and U.S. Patent No. 5,805,676 (collectively, "the Asserted Patents"), and Defendant is not liable for infringement thereof.

THIRD DEFENSE

One or more claims of the Asserted Patents are invalid for failing to comply with the provisions of the patent laws of the United States, including without limitation one or more of 35 U.S.C. §§ 101, 102, 103 and 112.

FOURTH DEFENSE

Plaintiff lacks standing to assert the rights on which relief is requested.

FIFTH DEFENSE

Plaintiff is not entitled to injunctive relief because any injury to it is not immediate or irreparable, and Plaintiff has an adequate remedy at law for any claims it is able to prove.

SIXTH DEFENSE

Plaintiff's recovery (if any) for alleged infringement of the Asserted Patents is limited to any alleged infringement committed no more than six years prior to the filing of the Complaint, pursuant to 35 U.S.C. § 286.

SEVENTH DEFENSE

Some or all of Plaintiff's claims are barred by one or more of the equitable doctrines of waiver, acquiescence, laches, estoppel, or unclean hands.

EIGHTH DEFENSE

Plaintiff's claims for relief are barred, in whole or in part, by the doctrine of prosecution history estoppel.

NINTH DEFENSE

Plaintiff's claims of infringement of the Asserted Patents are legally and equitably barred due to wrongful assertion of one or more Asserted Patents despite objective knowledge that the patents are invalid or otherwise unenforceable.

TENTH DEFENSE

Plaintiff improperly joined the claims and parties in this action under Rule 20 of the Federal Rules of Civil Procedure because there are questions of law or fact that are not common to all the defendants, and the Complaint should be dismissed, or, in the alternative, the claims against Defendant should be severed for trial.

ELEVENTH DEFENSE

Plaintiff has not willfully infringed any valid and enforceable claim of the Asserted Patents.

TWELFTH DEFENSE

Any damages sought by Plaintiff are limited by 35 U.S.C. §§ 284 and 286, and 287.

THIRTEENTH DEFENSE

Plaintiff cannot prove that this is an exceptional case justifying award of attorney fees against Defendant pursuant to 35 U.S.C. § 285.

FOURTEENTH DEFENSE

Plaintiff is barred by 35 U.S.C. § 288 from recovering costs associated with its action.

FIFTEENTH DEFENSE

To the extent that the accused instrumentalities are used by and/or manufactured for the United States Government, Plaintiff's claims against Defendant with respect to such products may not be pursued in this Court and are subject to other limitations pursuant to 28 U.S.C. § 1498.

SIXTEENTH DEFENSE

Defendant reserves the right to assert all other defenses, including, but not limited to, inequitable conduct, defenses identified under Rule 8(c) of the Federal Rules of Civil Procedure,

and/or defenses identified under the patent laws of the United States, that may now or in the future be available based on discovery, any other factual investigation, or any other development relating to this case or any other action.

PRAYER FOR RELIEF

WHEREFORE, Alcatel-Lucent USA, Inc. prays that this Court enter a judgment as follows:

- a. That Alcatel-Lucent USA, Inc. does not infringe any of the Asserted Patents;
- b. That the claims of the Asserted Patents are invalid;
- c. That Alcatel-Lucent USA, Inc. has not willfully infringed and is not willfully infringing any valid and enforceable claim of any of the Asserted Patents.
- d. That CyberFone Systems, LLC's claims are dismissed with prejudice;
- e. That CyberFone Systems, LLC must pay Alcatel-Lucent USA, Inc.'s attorney fees and the costs and expenses of this action;
- f. That this case is exceptional and awarding reasonable costs and expenses of this litigation to Alcatel-Lucent USA, Inc. as set forth in the Patent Laws; and
- g. That such other and further relief be granted as the court may deem just and proper.

SHAW KELLER LLP

/s/ Andrew E. Russell

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Dated: May 14, 2012